LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U.S.
FILED
AUG 19 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

..... Term, 1968

No. 419

CHARLES E. HART, Jr.,

Petitioner,

vs.

THE OHIO STATE BAR ASSOCIATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

GEORGE E. TYACK
Member of Bar
Supreme Court of the United States
8 E. Broad Street
Columbus, Ohio 43215
JAMES C. JUSTICE
1751 N. Star Road
Columbus, Ohio 43212
GORDON BOLON
8 E. Broad Street
Columbus, Ohio 43215
Attorneys for Petitioner.

JOHN R. WELCH
33 W. 11th Avenue
Columbus, Ohio
JAMES F. SHUMAKER
Pythian Building
Nelsonville, Ohio
Attorneys for Respondent.

MIDWEST LAW PRINTERS AND PUBLISHERS, INC., Columbus, Ohio 43216

TABLE OF CONTENTS

	Page
Opinion Below	1
Statement of Jurisdiction	1
Questions Presented	2
Question 1	2
Question 2	2
Constitutional Provisions Involved	3
Statement of Case	3
How Federal Questions Presented	5
Reasons Why This Writ Should Be Granted	6
Conclusion	14
Appendix A	15
Appendix B	19
Appendix C	21
Appendix D	24
Appendix E	25
Appendix F	29
Appendix G	24

TABLE OF AUTHORITIES

Cases

Connolly v. General Construction Co., 269 U.S. 385 11
Czarra v. Bd. of Medical Supervisors, 25 App. DC 443 10
Hackin v. Lockwood, 361 F 2d 499 10
In re Ruffalo, 36 L.W. 4284 9
In re Schlesinger, 172 A 2d 835 9
Lansetta v. New Jersey, 396 U.S. 455 11
Schware v. Bd. of Bar Examiners, 353 U.S. 232 9
Spevack v. Klein, 385 U.S. 511 9

Text

Lawyer Discipline: The Ohio Story (1967) 8

Statutes and Rules

Section 7203, Title 26 U.S. Code 7
Ohio Supreme Court Rule XVIII .....Appendix E, 25

Constitutions

Constitution of the United States
Amendment XIV .....Appendix D, 24

Misc.

Canons 29 and 32 of Professional Ethics..Appendix F, 29

IN THE

Supreme Court of the United States

..... Term, 1968

No. .....

CHARLES E. HART, Jr.,

Petitioner,

vs.

THE OHIO STATE BAR ASSOCIATION,

Respondent.

Petitioner herein, Charles E. Hart, Jr., prays that a writ of certiorari issue to review the judgment of the Supreme Court of Ohio entered June 26, 1968.

OPINION BELOW

The opinion of the Supreme Court of Ohio is reported as *Ohio State Bar Association v. Hart*, 15 Ohio St. 2d 97.

STATEMENT OF JURISDICTION

The decree of the Supreme Court of Ohio was entered June 26, 1968. Motion for rehearing was denied by entry of the Supreme Court of Ohio dated July 10, 1968. A copy of the opinion rendered by the Supreme Court of Ohio is appended hereto identified as Appendix A. A copy of the decree indefinitely suspending petitioner from the practice of law is appended hereto identified as appendix B. This case came before the Supreme Court of Ohio on Findings of Fact and Recommendations of the Board of Commissioners of the Supreme Court of Ohio which here were certified to the Supreme Court of Ohio on January 11, 1968 and a copy of said Findings and Fact and Recommendations is appended hereto identified as appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3) and this Court's rule 19 (a), inasmuch as the petitioner has been denied due process of law under Amendment XIV to the Constitution of the United States by the application of indefinite, vague and uncertain Canons of Professional Ethics, and by reason of the petitioner being afforded no opportunity to make presentation or being afforded a review before all of the Commissioners who served as fact finders in the case and who reported to the Supreme Court of Ohio.

QUESTIONS PRESENTED

1. When an attorney at law has been convicted of failing to file income tax returns by a Federal Court, may such attorney be subsequently disenfranchised in a state court proceeding by reason solely the application of Canons 29 and 32 of the Canons of Professional Ethics to said conviction when there was no charge or finding that said conviction involved moral turpitude and where said Canons are vague, indefinite and uncertain?

2. Where under Rule of the Supreme Court of Ohio a seventeen (17) member Board of Commissioners is appointed to hear and make findings and recommendations respecting alleged misconduct of attorneys, may such hearing be conducted before only three (3) members when said three (3) members do not report directly to the Supreme Court of Ohio but instead report to the remaining members which do not hear either side of the controversy and which in turn report to the Supreme Court of Ohio?

APPLICABLE CONSTITUTIONAL PROVISIONS, RULE OF COURT, AND CANONS OF PROFESSIONAL ETHICS

This case involves the following:

Constitutional Provision

1. Amendment XIV to the Constitution of the United States more particularly Section 1 thereof, which is appended hereto as Appendix D.

Rule of Court

1. Applicable provisions of Rule XVIII of the Rules of the Supreme Court of Ohio which is appended hereto as Appendix E.

Canons of Professional Ethics

1. Canons 29 and 32 of the Canons of Professional Ethics which are appended hereto as Appendix F.

Statute

1. 26 U.S. Code 7203 which is appended hereto as Appendix G.

STATEMENT OF CASE

The petitioner, Charles E. Hart, Jr., is an attorney at law licensed to practice law in the state of Ohio. On March 10, 1966, an information was filed against petitioner in United States District Court for the Southern District of Ohio, charging that petitioner "did wilfully and knowingly fail to make and file" Federal income tax returns for the years 1960, 1961, and 1962 in violation of Section 7203, Title 26, U.S. Code. To this charge petitioner pleaded nolo contendere and was found guilty with fine of $2,000.00 and sentence of two years imprisonment which was suspended.

Approximately one year later the Ohio Bar Association filed a complaint against petitioner charging the fact of the

conviction, as above and charging that said conviction placed said petitioner in violation of Canons 29 and 32 of the Canons of Professional Ethics.

Pursuant to Rule XVIII of the Rules of the Supreme Court of Ohio the matter then came on to hearing before a panel of three (3) member of the seventeen (17) member Board of Commissioners appointed by the Court. At said hearing the only evidence introduced by the Relator, the Ohio State Bar Association, was the record entries of said conviction in the Federal Court. The petitioner then testified and introduced other testimony and evidence relating to the circumstances of why he did not file and did not feel he had to file income tax returns for the years in question. Additionally, other evidence was introduced by petitioner pertaining to his good character and his good personal and professional reputation.

There was nothing contained in the charges or evidence of Relator, the Ohio State Bar Association, as to any moral turpitude having been involved in connection with said conviction. Further there was nothing in the charges or evidence relating to any aspect of either Canons 29 or 32 of the Canons of Professional Ethics.

Subsequent to the hearing before the three (3) member hearing panel, the full Board of Commissioners reported their Findings of Fact and Recommendations to the Supreme Court of Ohio, there was no hearing before the Board of Commissioners, at least in which the Petitioner was a party.

The matter then came on for hearing before the Supreme Court of Ohio on objections filed by the petitioner herein. The case was submitted on briefs and oral argument and the Court confirmed the findings of the Board that petitioner had violated Canons 29 and 32 of the Canons of Professional Ethics and the Court confirmed the recom-

mendation of the Board that petitioner be indefinitely suspended from the practice of law.

There was no finding by the Board of Commissioners or the Supreme Court of Ohio that there was moral turpitude involved in the circumstances of the failure to file the income tax returns in question.

There was no reference in the Charges, Findings and Recommendations of the Board or in the decision or order of the Supreme Court of Ohio as to how or what portion of Canons 29 and 32 of the Canons of Professional Ethics were deemed applicable.

Motion for rehearing was subsequently denied.

HOW FEDERAL QUESTIONS PRESENTED

Under Rule XVIII of the Rules of the Supreme Court of Ohio, appendix E, the Board of Commissioners provides a hearing panel of three (3) for matters charging an attorney with misconduct. The full Board of Commissioners then subsequently report to the Supreme Court of Ohio with opportunity at this stage for objections to the findings and/or recommendation. It is clear that the Board of Commissioners has not power or authority to invoke penalties of public reprimand, suspension or permanent disbarment.

The federal questions were raised with the Supreme Court of Ohio by timely filing of objections prior to hearing before oral argument. Question 2 pertaining to the commissioners who actually heard the case to the Court was raised by objection No. 5 filed with the Court February 9, 1968 with argument and authorities in support and we quote Objection No. 5 as follows:

> "5. That the entire proceedings before the Panel and under Rule XVIII of the Rules of the Supreme Court of Ohio deprived the Respondent of due process of law and were unconstitutional under the Ohio and

United States Constitutions in that there was an improper delegation of judicial authority."

Feeling that Question No. 1 pertaining to the vagueness and indefiniteness of Canons 29 and 32 might not be considered to be fairly comprised within the objection just recited, Question No. 1 was raised by the timely filing of a Supplemental Objection No. 6 and supporting brief on March 15, 1968 before oral argument to the Supreme Court of Ohio and we quote said objection as follows:

"6. That the Conclusion of said Board that Respondent has violated Canons 29 and 32 of the Canons of Professional Ethics has deprived Respondent of due process of law under Amendment XIV to the Constitution of the United States because said Canons are indefinite, uncertain and vague."

The decision of the Supreme Court of Ohio, appendix A, reflects no consideration to the constitutional questions presented nor does it even acknowledge that said questions were raised and presented.

REASONS WHY THIS WRIT SHOULD BE GRANTED

As to Question 1.

Canons 29 and 32 of the Canons of Professional Ethics are so indefinite, uncertain and vague that their application has deprived petitioner of due process of law under Amendment XIV to the constitution of the United States.

Rule XVIII of the Rules of the Supreme Court of Ohio establishes the disciplinary procedure to be followed in cases involving charges of misconduct against attorneys. Subparagraph (a) titled "Misconduct" defines that term and we quote that definition from said Rule XVIII as follows:

"Misconduct shall mean any violation of any provision of the oath of office taken upon admission to prac-

tice of law in this State, *or any violation of the Canons of Professional Ethics* or the Canons of Judicial Ethics as adopted by the Court from time to time, disobedience of the terms of an order imposing a suspension for an indefinite period from the practice of law, or the Commission or conviction of a crime involving moral turpitude." [Emphasis added]

Petitioner was convicted of violation of Section 7203, Title 26 U.S. Code. The fact of this conviction was the only evidence presented by the Ohio State Bar Association in the disciplinary proceeding under said Rule XVIII. The charges of the Ohio State Bar Association in this case read as follows:

> "That on the tenth day of March 1966, in the United States District Court for the Southern District of Ohio—Western Division, the Respondent, Charles E. Hart, Jr., was convicted of the crime of wilfully and knowingly failing to make and file an income tax return for the years 1960, 1961 and 1962 in violation of Section 7203, Title 18, United States Code; and in violation of Canons 29 and 32 of the Canons of Professional Ethics as adopted by this Court." [By agreed stipulation at trial, Title 26 was substituted for Title 18 of the U.S. Code in the above charge.]

There was no charge, proof or finding by the Supreme Court of Ohio that said conviction was for a crime involving moral turpitude. Thus, on the basis of the record of conviction alone the Board of Commissioners found and the Supreme Court confirmed that this conviction constituted a violation of Canons 29 and 32 of the Canons of Professional Ethics, and without reference to what elements or parts of said Canons petitioner was in violation of.

At this juncture we urge this Court to simply read Canons 29 and 32 of the Canons of Professional Ethics which are set forth in toto in appendix F. The violation of any

of the Canons is now a ground of misconduct under said Rule XVIII.

The language of Canons 29 and 32 is commendable as a statement of goals or objectives. But rather than a definite, certain and specific statement of conduct with prohibitive or required standards, these particular Canons read as would a prefacing or introductory statement to the other Canons which generally are of a considerably more definitive character.

Under the auspices of the Ohio State Bar Association Foundation, Professor Oliver Schroeder, Jr. wrote "Lawyer Discipline: The Ohio Story" published in 1967. At page 17 he discusses the formation of a Committee in 1952 of the Ohio State Bar Association to draft a rule for disbarment procedures. At page 18 Professor Schroeder quotes from the Presidential address to the Ohio State Bar Association relating to the proposed rule in part as follows:

> "Restating in clear and concise terms the standards of conduct — standards as high as we all know they ought to be — required of every member of the Bar, whether he holds judicial office or is engaged in private practice and eliminating in the process all canons of conduct which no one has any intention of enforcing and therefore constitute nothing but *beautiful prattle*;"
>
> [Emphasis added]

Notwithstanding this instruction, all of the Canons including Canons 29 and 32 remain in force and operative today.

In the instant case the Ohio State Bar Association obviously decided that they need not be troubled with any legal or factual question pertaining to whether there was moral turpitude involved in petitioner's federal court conviction for failing to file income tax returns. Rather, they took the easy road and charged a violation of Canons 29 and 32 and the Supreme Court of Ohio found that those Canons were violated by said conviction. The reason Can-

ons 29 and 32 were chosen is clear. Those Canons are so broad and so general and so subject to subjective interpretation that they have become the "catch all" Canons. If an act does not meet the more specific element of the other Canons then the only place to turn is to Canons 29 and 32.

The point in the case at hand is well stated in *United States v. Reese*, 92 U.S. 214 from which we quote from page 22 as follows:

> "It would certainly be dangerous if the legislative could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large."

The extent that Canons 29 and 32 have been used in disciplinary cases in Ohio as of the writing of "Lawyer Disciplinary: The Ohio Story" is found in the statistical review therein and reveals that of 106 cases, 37 cases involved Canon 29; and 32 cases involved Canon 32. The fish "net" is indeed large and effective. The size and use of the net must now be of grave concern.

This question as to the application of Canons 29 and 32 is an important and substantial question relating to due process of law being afforded all members of the bar. The application of Canons 29 and 32 herein by the Supreme Court of Ohio is analogous to decisions by this Court in declaring statutes or rules unconstitutional and as such is a denial of due process of law which this Court has repeatedly afforded attorneys in disciplinary.

The cases are clear that whether the practice of law is termed a right or a privilege, revocation or disciplinary proceedings must afford due process of law under Amendment XIV to the Constitution of the United States. *Spevack v. Klein*, 1967, 87 S. Ct. 625, 385 U.S. 511. *In re Schlesinger*, 1961, 172 A 2d 835, 404 Pa. 584. *In re Ruffalo*, (1968) 36 Law Week 4284. For review of cases involving "Suspen-

sion or revocation of medical or legal professional license as violating due process—federal cases" see 98 L. Ed 851 annotation where at page 852 we quote:

> "All the cases dealt with herein support (most often inferentially, but nonetheless clearly) the view that due process of law plays a fundamental part in situations involving the suspension or revocation of legal or medical licenses. It is not the issue of whether a lawyer or medical practitioner is entitled to due process under these circumstances that has been the subject of judicial concern, but, instead, whether, as to both matters of substance and matters of procedure, he has, in fact, been afforded such due process."

See also cases relating to admission to the Bar. *Schware v. Board of Bar Examiners of State of N. M.*, 1957, 77 S. Ct. 752, 353 U.S. 232, 64 A.L.R. 2d 288; *Hackin v. Lockwood*, 361 F 2d 499 (1966).

Under the annotation in 98 L. Ed 851, *supra*, section 2 (b), "Vagueness of statutory language", we quote from page 854:

> "If a statute providing for the suspension or revocation of a medical or legal professional license is to meet the test of substantive due process it must be certain in its terms."

More specifically in point is *Czarra v. Board of Medical Supervisors*, 1905, 25 App DC 443, and review of Canons 29 and 32 in light of this decision is invited. There the statute stated as grounds for revocation "Unprofessional or dishonorable conduct." The Syllabus of the Court, particularly numbers 5 through 10 inclusive sets forth clearly and in excellent fashion the Court's reasoning and we quote syllabus 7 and 10 as follows:

> "7. The test to determine whether a statute defining an offense is void for uncertainty is whether the language may apply not only to a particular act about

which there can be little or no difference of opinion, but equally to other acts about which there may be radical differences, thereby devolving upon the court the exercise of arbitrary power of discriminating between the several classes of acts."

"10. So much of the act of Congress of June 3, 1896, 29 Stat. at L. 198, chap. 313, as authorizes the board of medical supervisors in this District to revoke the license of a medical practitioner upon conviction of 'unprofessional or dishonorable conduct', independently of other offenses for which a license may be revoked, is void for uncertainty; it being a matter of opinion whether any given act constitutes such conduct; and an order of the board is void which revokes the license of a physician on a complaint charging him with such conduct in that he circulated obscene matter."

The test as to certainty is applied to the statute or in this case Canons 29 and 32, rather than with reference to particular conduct. Thus, the court stated in *Lansetta v. New Jersey*, 1939, 306 U.S. 455 at page 453:

"It is the statute, not the accusation under it that prescribes the rule to govern conduct and warns against transgression."

In the *Lansetta* case the court cited *Connally v. General Construction Co.*, 269 U.S. 385 and quotes from page 391 of the *Connally* case:

"That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

As to Question 2.

The question here does not relate to the validity of the commissioner system as such. However, under Rule XVIII of the Rules of the Supreme Court of Ohio, in particular paragraphs 10 and 14, the actual hearing is before 3 members of the Board of Commissioners who are charged to hear and take evidence and report to the full Board. The full Board of Commissioners is then charged to review and report to the Supreme Court of Ohio. In short, there is no provision for, nor was there here, any direct reporting by the panel members who heard this case to the Supreme Court of Ohio.

A further detailed look at this procedure reveals that under paragraphs 14 and 15 of said rule, as to penalties of public reprimand and above, the full Board certifies its findings of fact and recommendations to the Supreme Court. This Report has behind it the impetus and weight of the full membership of 17 and said Rule makes no provision for minority opinions. As a matter of fact in "Lawyers Discipline: The Ohio Story", *supra*, at page 136 we quote an interesting feature of the operation of said Rule:

> "On numerous occasions divisions of opinions were expressed orally but the Board abided by the majority vote and a formal dissenting opinion was not produced. In November, 1966, the first formal dissenting opinion in the long history of the Board's recommendation to the Supreme Court occurred."

This is the more interesting considering that there are 17 members of the Board. Their propensity for unanimity certainly exceeds that of any multimember court or quasi-judicial body in our limited experience.

Now, continuing to look at said Rule and its application, there is no provision or opportunity for either side, Relator or Respondent, to make any kind of objection to the report

of the three member panel. There is no provision or opportunity for either side to make any presentation orally or otherwise to the full Board and thus no opportunity to raise questions of law or fact or to in any way point to the deficiencies of the record. Indeed, the report of the Hearing Panel to the Board is not even available for review by either party prior to its submission to the Board.

Thus, the Review called for in said Rule, paragraph 14, is a review without any party representation whatsoever. The result, as in this case, is that Respondent is faced with a recommendation of the full 17 member Board of which 14 did not hear the case and of which 14 heard no presentation by or on behalf of the Respondent. Any presentation was by the three member Hearing Panel.

Further, to the best of our knowledge, there was only one transcript of the proceeding available for the entire Board and much less than 17 briefs that were filed with the Panel for the Board's review. We do not know how much in advance of the Board's meeting for discussion on this case that the Findings and Recommendations of the Hearing Panel were available. However, we do know that the Board met at 1:30 P.M. on December 1, 1967, to consider this case among several others. We know also that the fully prepared, typed and signed Findings and Recommendations of said Board were stamped as being filed on December 1, 1967.

Thus, not only are serious questions raised as to the extent and thoroughness of the Board's review, but as well the total lack of opportunity for Respondent to raise questions at the review stage.

Those cases we are able to find with respect to commissioners' findings involved direct reporting to the court by the commissioner or commissioners who themselves had actually personally heard the evidence and could make first

hand evaluation. Additionally, our study of cases providing for review systematically reveal that throughout our entire judicial system review contemplates representation and presentation at the review stage itself. Our inability to find precedent to the contrary, we believe supports the position taken herein.

The absence of review in the fullest and usual manner and method and the justifiable inference drawn from the record as to the limited extent of review has deprived Respondent of due process of law.

CONCLUSION

This case presents an ideal opportunity for the Court to clarify the question of rights of lawyers in connection with the application of Canons 29 and 32 of the Canons of Professional Ethics and the need for such clarification is, we think, clear from even a casual reading of those Canons. The need for such clarification is demonstrated by the extent of the application of those Canons as herein.

Additionally important questions pertaining to the application of the Ohio disciplinary rule and the failure to provide lawyers with the same constitutional safeguards as others cries out for review.

George E. Tyack
Member of Bar
Supreme Court of the United States
8 E. Broad Street
Columbus, Ohio 43215
James C. Justice
1751 N. Star Road
Columbus, Ohio 43212
Gordon Bolon
8 E. Broad Street
Columbus, Ohio 43215
Attorneys for Petitioner.

APPENDIX "A"

Ohio State Bar Assn. v. Hart, 15 Ohio St. 2d 97.

Attorneys at law — Misconduct — Disciplinary action — Suspension from practice for indefinite period — Acts warranting — Continued failure to file federal income tax returns.

(D. D. No. 86 — Decided , 1968.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline.

The relator, the Ohio State Bar Association, filed a complaint against the respondent, Charles E. Hart, Jr., charging him with misconduct as an attorney at law in that he was convicted of the crime of wilfully and knowingly failing to file federal income tax returns for the years 1960, 1961 and 1962 in violation of Canons 29 and 32 of the Canons of Professional Ethics.

The Board of Commissioners on Grievances and Discipline recommended that respondent be suspended for an indefinite period from the practice of law.

Mr. James F. Shumaker and *Mr. John R. Welch*, for relator.

Mr. James C. Justice and *Mr. Gordon Bolon*, for respondent.

Per Curiam. On March 10, 1966, an information was filed against respondent in the United States District Court for the Southern District of Ohio, Western Division, charging that respondent "did wilfully and knowingly fail to make and file" federal income tax returns for the calendar years of 1960, 1961 and 1962 in violation of Section 7203, Title 26, U.S. Code. Respondent was charged with having received a gross income of $29,874.70 in 1960, $28,804.28 in 1961 and $36,669.16 in 1962. Section 6012(a)(1), Title 26, U.S. Code, requires an individual having a gross income of

$600 or more for the taxable year to file a federal income tax return.

To this information, respondent entered a plea of *nolo contendere*. Respondent was sentenced to two years imprisonment and was fined $2,000. The sentence of imprisonment was suspended and respondent was placed on probation for two years. The $2,000 fine has been paid.

In defense to the charged misconduct *respondent admits his failure to file the federal income tax returns*, but denies that such conduct violates the Canons of Professional Ethics. Respondent contends that prior to the taxable years in question, he made certain loans totaling $16,700 to a dairy which were not paid, that he decided to write the bad debts off against his taxable income for the years 1960, 1961 and 1962, and that the aggregate of his otherwise net taxable income for those years was less than $16,700. Respondent claims further that he believed that he was under no obligation to file a federal income tax return if his exemptions and deductions exceeded his gross income.

The record indicates that, while respondent did not specialize in the practice of tax law, he had prepared numerous income tax returns for his clients during his professional career and that he was entitled to practice before the Internal Revenue Service.

The evidence supports the charge that respondent violated Canons 29 and 32 of the Canons of Professional Ethics.

The question for determination is whether the discipline of suspension for an indefinite period from the practice of law recommended by the Board of Commissioners on Grievances and Discipline is warranted.

This court in *Cleveland Bar Assn. v. Bilinski* (1964), 177 Ohio St. 43, 201 N.E. 2d 878, and *Dayton Bar Assn. v. Prear* (1964), 175 Ohio St. 543, 196 N.E. 2d 773, held that the con-

tinued and totally unjustified failure of an attorney at law to file income tax returns is sufficient grounds to warrant a suspension for an indefinite period from the practice of law regardless of whether any "moral turpitude" is involved. In light of these authorities, respondent's wholly unwarranted failure to file federal income tax returns for three consecutive years supports the board's recommendation of suspension for an indefinite period from the practice of law.

The case of *Doelker v. Accountancy Bd.* (1967), 12 Ohio St. 2d 76, 232 N.E. 2d 407, relied on by respondent, is not controlling.

The objections to the recommendation of the board are overruled, and the recommendation of the board is confirmed.

Report confirmed and judgment accordingly.

TAFT, C. J., ZIMMERMAN, MATTHIAS, O'NEILL, SCHNEIDER and BROWN, JJ., concur.

HERBERT, J., dissents because he is of the opinion that a public reprimand would be sufficient.

TAFT, C. J., concurring. The instant case is clearly distinguishable from *Doelker v. Accountancy Board* (1967) 12 Ohio St. 2d 76, 232 N.E. 2d 407. In that case, the only evidence in the record, which is what this court reviewed, was a certified copy of Mrs. Doelker's conviction under Section 7203, Title 26, U.S. Code, of wilfully failing to make an income tax return for one year.

As pointed out in the opinion, she could have been convicted of this crime because she had more than $600 gross income in that year although she had no income tax liability for the year. The majority of this court was of the opinion that the recital of the evidence against Mrs. Doelker in the opinion of the United States Court of Appeals represented at best the hearsay statement of what the record of the

federal court case contained. Neither that record nor the opinion were offered in evidence in the Accountancy Board proceedings against Mrs. Doelker or in the Common Pleas Court appeal therefrom. They were, therefore, not in the record which this court reviewed.

In the instant case, the record discloses charges that Hart had gross income of over $29,000 in 1960, over $28,000 in 1961, and over $36,000 in 1962. His untenable explanation as to why he filed no returns in any one of those three years demonstrates a serious lack of candor. His suggestion of losses of $16,700 in that period does not explain why he failed to file returns. The record evidence indicates a serious effort at tax evasion.

It is stated at page 80 in the opinion of the *Doelker* case: "* * * There is nothing in the record to indicate that her conduct was reprehensible because of repeated failures to file such returns when they should have been filed, as in *Cleveland Bar Association v. Bilinski* (1964), 177 Ohio St. 43, 201 N.E. 2d 878; *Dayton Bar Association v. Prear* (1964), 175 Ohio St. 543, 196 N.E. 2d 773 * * *; or because of any effort to conceal her liability for payment of income taxes * * *."

APPENDIX "B"

THE STATE OF OHIO, } SS
City of Columbus. }

The Supreme Court of the State of Ohio
Of the Term of January, 1968
To-Wit: June 26, 1968

THE OHIO STATE BAR ASSOCIATION,
Relator,

vs.

CHARLES E. HART, JR.,
Respondent.

ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

It appearing to the Court that the Board of Commissioners on Grievances and Discipline filed its Final Report in this Court on January 11, 1968, recommending that the respondent, Charles E. Hart, Jr., should be indefinitely suspended from the practice of law pursuant to Section 6 (b) of Rule XVIII of the Supreme Court of Ohio; and it further appearing that respondent filed objections to the Final Report of the Board of Commissioners on Grievances and Discipline, this cause was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court that the Final Report of the Board of Commissioners on Grievances and Discipline be, and the same hereby is, confirmed and the respondent, Charles E. Hart, Jr., is indefinitely suspended from the practice of law.

The respondent, Charles E. Hart, Jr., is hereby ordered to cease and desist from the practice of law in any form and

is forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority. It is further ordered that he be forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform services of any kind for others which would constitute the practice of law. He is also forbidden to hold himself out to another or to the public as being authorized to perform legal services, and he is hereby divested of each, any and all of the rights, privileges and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

It is further ordered that the respondent, Charles E. Hart, Jr., surrender his Certificate of Admission to Practice to the Clerk of this Court forthwith and that his name be stricken from the roll of attorneys maintained by this Court.

It is further ordered that the respondent, Charles E. Hart, Jr., pay costs of these proceedings taxed in the amount of Two-hundred sixty dollars and forty-one cents, ($260.41).

It is further ordered that the Clerk of this Court issue certified copies of this entry as provided for in Section 19, Rule XVIII of the Rules of Practice of this Court.

APPROVED: /s/ KINGSLEY TAFT, CHIEF JUSTICE

I, Thomas L. Startzman, Clerk of the Supreme Court of the state of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal 48.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this 26th day of June, 1968.

THOMAS L. STARTZMAN, CLERK
/s/ SAM F. ADKINS, DEPUTY

APPENDIX "C"

BEFORE THE BOARD OF COMMISSIONERS OF GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

Case No. 117

In re:

CHARLES E. HART, JR.,

Respondent,

vs.

OHIO STATE BAR ASSOCIATION,

Relator.

FINDINGS OF FACT AND RECOMMENDATIONS OF THE BOARD

FINDINGS OF FACT

1. Charles E. Hart, Jr. is forty-one years old. He was graduated from Wilmington College and from Salmon P. Chase Law School. He has been practicing in Wilmington since December 1953. He is a member of the Clinton County and Ohio State Bar Associations.

2. On March 10, 1966, an information was filed against respondent in the United States District Court for the Southern District of Ohio charging, in three counts, that respondent "did wilfully and knowingly fail to make and file" Federal income tax returns for the calendar years of 1960, 1961 and 1962, in violation of Section 7203, Title 18, U. S. Code. Respondent was charged with having received a gross income of $29,874.70 in 1960, 28,804.28 in 1961 and 36,669.62 in 1962. To this information; respondent entered a plea of nolo contendere. Respondent was sentenced to two years imprisonment and was fined $2,000. The sentence of imprisonment was suspended and respondent was placed upon probation for two years. The $2,000 fine has been paid.

3. Respondent explained his failure to file income tax returns for 1960, 1961 and 1962, as follows: From 1944 until his admission to the bar, respondent was employed by a small dairy in Wilmington. Following his admission to the bar and continuing until 1959, respondent retained part-time employment at the dairy doing bookkeeping and other administrative work. The dairy did not prosper, and respondent made a series of loans to the dairy as follows:

April 2, 1954, $1,500 (Respondent's Exhibit 1)
October 5, 1955, $7,500 (Respondent's Exhibit 2)
October 15, 1955, $5,000 (Respondent's Exhibit 3)
November 12, 1957, $2,700 (Respondent's Exhibit 4)

These loans were evidenced by promissory notes which were authenticated by Robert H. Carpenter, the dairy president, a witness for respondent. The majority stock interest in the dairy was held by a Cincinnati dairy. In August 1959, the president of the Cincinnati dairy, a Mr. Castleberry, relieved Carpenter and respondent of their duties, took over the operation of the Wilmington dairy and, in due course, dissolved the subsidiary corporation.

Respondent, being unable to collect his notes totaling $16,700 from Castleberry or the parent corporation, chose to write them off against his taxable income for the years 1960, 1961 and 1962. He claims that the aggregate of his otherwise net taxable income for those years, was less than $16,700.

Respondent further claims that he believed that he was under no obligation to file an income tax return if his exemptions and deductions exceeded his gross income.

4. During the eight years between respondent's admission to the bar in 1953 and his first failure to file a tax return for the year 1960, respondent had prepared numerous income tax returns for his clients. Respondent held a

card entitling him to practice before the Internal Revenue Service.

5. Respondent testified that the gross income figures claimed by the Government in the information averaging over $30,000 a year were highly exaggerated and included, at least in part, funds received by respondent for the account of a client loan company.

6. Honorable C. Luther Swaim of the Clinton County Common Pleas Court, Honorable George L. Schilling, Jr., Clinton County Prosecuting Attorney, Honorable Donald Osborn, Clinton County Sheriff, and two private citizens were produced by respondent as character witnesses. They testified that respondent is well regarded in his community.

7. At the close of the hearing, respondent and his attorney promised to submit to the hearing panel at an early date certain records in support of respondent's position. No such records were submitted to the panel in the six months following the hearing.

CONCLUSION

Respondent has violated Sections 29 and 32 of the Canons of Professional Ethics by failing to file Federal income tax returns for the years 1960, 1961 and 1962.

RECOMMENDATION

The Board recommends that respondent be suspended from the practice of law for an indefinite period.

Karl H. Weaner,
Chairman, Board of Commissioners on Grievances and Discipline

William D. Radcliff,
Secretary, Board of Commissioners on Grievances and Discipline

APPENDIX "D"

Amendment XIV

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX "G"

26 U.S.C. 7203—Willful failure to file return, supply information or pay tax.

A person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of Section 6015 or Section 6016), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

APPENDIX "E"

RULE XVIII[2]

Disciplinary Procedure

Pursuant to the powers of this Court over the Bar of this State and the members therof, this rule is amended, as follows, effective on March 11, 1964, and shall apply to all pending cases.

• • • • • • • • • • • • • • •

• • • • • • • • • • • • • • •

(5) DEFINITIONS.

(a) MISCONDUCT. Misconduct shall mean any violation of any provision of the oath of office taken upon admission to practice of law in this State, or any violation of the Canons of Professional Ethics or the Canons of Judicial Ethics as adopted by the Court from time to time, disobedience of the terms of an order imposing a suspension for an indefinite period from the practice of law, or the commission or conviction of a crime involving moral turpitude.

• • • • • • • • • • • • • • •

(10) HEARING BY PANEL OF THREE COMMISSIONERS. After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice, by a panel of Commissioners appointed by the Chairman of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. Such panel shall consist of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes.

The Chairman of the panel may have a transcript pre-

[2] Same as former Rule XXVII as amended March 11, 1964.

pared of the testimony taken at each such formal hearing, and the cost thereof shall be paid by the Secretary of the Board of Commissioners, or taxed as costs.

• • • • • • • • • • • • • • • •

(13) PUBLIC REPRIMAND; SUSPENSION OR PERMANENT DISBARMENT; DUTY OF PANEL. If the panel finds and determines that the Respondent is guilty of misconduct and that public reprimand, suspension for an indefinite period, or permanent disbarment is merited, the panel shall make its certified report of the proceedings before it, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, with the Secretary of the Board of Commissioners.

(14) REVIEW BY ENTIRE BOARD OF COMMISSIONERS; BOARD TO ADMINISTER PRIVATE REPRIMAND. Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the Board of Commissioners determines that a private reprimand shall be administered it shall administer such private reprimand. If the complaint is dismissed, or a private reprimand is administered, such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the panel that heard the matter.

(15) PUBLIC REPRIMAND; SUSPENSION OR PERMANENT DISBARMENT; DUTY OF BOARD AFTER REVIEW. If the Board of

Commissioners determines that a public reprimand, suspension for an indefinite period from the practice of law or permanent disbarment is merited, said Board of Commissioners shall thereupon make a final certified report of such proceedings, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, in the office of the Clerk of this Court, and shall forthwith notify the Respondent and all counsel of record of such action, enclosing with such notice a copy of the findings of fact and recommendations and a copy of the statement of the actual and necessary expenses incurred.

(16) Show Cause Order Issued by the Court to Respondent. On the filing of such final report of the Board of Commissioners, this Court shall issue to the Respondent an order to show cause why the report of said Board of Commissioners shall not be confirmed and a disciplinary order entered. Notice of the order to show cause shall be served by the Clerk of this Court on the Respondent and all counsel of record, personally or by registered mail.

(17) Response to Order to Show Cause and Objections. The Respondent or Relator within twenty (20) days after the issuance of an order to show cause may file objections to the findings or recommendations of the Board of Commissioners and to the entry of a disciplinary order or to the confirmation of the report on which the order to show cause was issued and a brief in support of such objections, together with proof of service of copies thereof on the Secretary of the Board of Commissioners and on all counsel of record. All objections and briefs shall be filed in the number and form required by rules of this Court for original actions.

. . . . . .

(19) Review by Court; Reimbursement for Expenses of Board; Duty of Clerk on Entering Order. After hearing on objections, or, if objections are not filed within the prescribed time, this Court shall enter such order as it may find proper, which may include provision for reimbursement of costs and expenses incurred by the Board of Commissioners. Upon the entry of any disciplinary order pursuant to this rule, the Clerk of the Court shall mail certified copies thereof to counsel of record, to the Board of Commissioners, to Respondent (at his last known address), to the Ohio State Bar Association, to the local bar association or associations in the county or counties in which the Respondent resides and maintains his office and the county or counties from which the complaint originated, to the Presiding Judge of the Court of Common Pleas for such county or counties, and to the Presiding Judge of the United States District Courts in Ohio; the United States Court of Appeals for the Sixth Circuit; and to the Supreme Court of the United States.

If a disciplinary order of the Court provides for a public reprimand, the Clerk of this Court shall arrange for publication thereof in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the Relator local bar association.

If a disciplinary order of the Court provides for a permanent disbarment or suspension for an indefinite period from the practice of law, the Clerk of this Court shall arrange for publication thereof in the official reports of this Court, in the Ohio Bar publication of the Ohio State Bar Association and in a publication, if any, of the Relator local bar association.

. . . . . .

APPENDIX "F"

Canons of Professional Ethics

"29. Upholding the Honor of the Profession. Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the Bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the Bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice."

"32. The Lawyer's Duty in its Last Analysis. No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a

statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen."